

**St. Barnabas Hospital and Brotherhood of Security Personnel, Officers and Guards International Union.** Case 2–CA–32373

April 13, 2001

**DECISION AND ORDER**

BY MEMBERS LIEBMAN, HURTGEN, AND WALSH

On October 19, 2000, Administrative Law Judge D. Barry Morris issued the attached decision. The Charging Party filed exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

*Susannah Z. Ringel, Esq.*, for the General Counsel.

*Joel E. Cohen, Esq. (McDermott, Will & Emery)*, of New York, New York, for the Respondent.

*Curtis Truehart*, of New York, New York, for the Union.

**DECISION**

**STATEMENT OF THE CASE**

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in New York City, New York, on May 10, 2000. On a charge filed on August 6, 1999,<sup>1</sup> a complaint was issued on November 30 alleging that St. Barnabas Hospital (Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). Respondent filed an answer denying the commission of the alleged unfair labor practices.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by the General Counsel and by Respondent.

On the entire record of the case, including my observation of the demeanor of the witnesses, I make the following

<sup>1</sup> The Charging Party has implicitly excepted to some of the judge's credibility findings. The Charging Party claims disparate treatment, specifically that management was aware that other employees were sharing parking stickers but did not discipline them. The Respondent's director of security, Nicholas Rodelli, testified that he had no proof of any employees sharing parking stickers other than the employees discharged in this case. The judge generally credited Rodelli's testimony. The Board's established policy is not to overrule a judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>1</sup> All dates refer to 1999 unless otherwise specified.

**FINDINGS OF FACT**

**I. JURISDICTION**

Respondent, a New York corporation, with an office and place of business in Bronx, New York, has been engaged in the operation of a hospital. Respondent has admitted, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, it has been admitted, and I find, that the Brotherhood of Security Personnel, Officers and Guards International Union (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

**II. THE ALLEGED UNFAIR LABOR PRACTICES**

*A. The Facts*

**1. Background**

Respondent operates a hospital in Bronx, New York, at which facility it has several parking lots. Prior to March 1998 the hospital managed and operated the parking lots and employees were not required to pay for parking. In March 1998, it retained G & G Express, Inc. (G&G), a private contractor, to operate and manage the lots. As of April 1, 1998, any employee who wished to use the lots was required to purchase a color-coded monthly parking sticker or pay for daily use of the lots. On purchasing a parking sticker, an employee is assigned an individual number that is recorded along with the employee's name and license number in a monthly parking roster maintained by G&G. A memorandum was sent to employees advising them of the change, security guards were notified of the change during roll-call and a sign was posted, which read "NO SUBSTITUTE MONTHLY VEHICLES UNLESS DRIVEN BY MONTHLY APPLICANT."

**2. Discharges**

While conducting a routine inspection of the lots during June 1999, Francisco Villegas, a G&G employee, noticed two vehicles in the main parking lot both displaying a photocopy of sticker #0333. Villegas telephoned Greg Gonzalez, owner of G&G, who came to the lot and photographed the vehicles. The vehicles belonged to Michael Shaffer, a hospital security guard, and Rosa Cinquina, a hospital employee. On June 28, Nicholas Rodelli, the hospital's director of security, and Lt. Robert White observed that the vehicle belonging to Jose Rivera, another hospital security guard, also displayed sticker #0333. Rodelli advised Keith Wolf, director of human resources, that the three employees were using the same parking sticker. Shaffer and Rivera were terminated on July 29 and Cinquina was discharged on August 9.

*B. Discussion and Conclusions*

The General Counsel contends that Shaffer and Rivera were discharged because of their union activities. Rivera had been an active union supporter from at least 1993. As a union delegate in 1996, Rivera was involved in obtaining signatures to oppose a decertification petition. Rivera testified that his union activities in 1999 consisted of his attempting to represent an employee at a grievance hearing. From 1993 until 1999 he filed more than 50 grievances. He testified that during that same period he was

never disciplined because of his activities on behalf of the Union.

With respect to Shaffer, the General Counsel's brief refers to testimony that in 1993 Shaffer wrote a letter to management complaining about his supervisor. It is unclear how this relates to union activity. The General Counsel also maintains that Shaffer was discharged because he was a friend of Rivera, or, in the alternative, to "cover-up its unlawful discharge of Rivera." Cinquina, who was the third employee who was discharged, was not a member of the Union.

I find that the General Counsel has not made a prima facie showing sufficient to support the inference that union activity was a motivating factor in the hospital's discharges of Rivera and Shaffer. Rivera had been an active union supporter since 1993. He did nothing in 1998 or 1999 of particular importance with respect to the Union, which would have motivated the hospital to retaliate against him for his union activity. In *Salem Tube*, 296 NLRB 142, 145 (1989), an employee's termination occurred 18 months after his union activity. The Board affirmed the administrative law judge's conclusion that the union activity was not the motivating factor for the discharge. With respect to Shaffer, while he was a union member, the record contains no evidence concerning his activity on behalf of the Union. In addition, Cinquina was discharged for the same event, and she was not even a member of the Union.

In March 1998, Respondent engaged G&G Express to manage and operate its parking lots. While prior thereto, employees were permitted to park without paying a fee, as of April 1, 1988, em-

ployees were required to pay. I credit Gonzalez' testimony that all employees, including security guards, were required to pay. Based on the credited testimony in the record, I find that during June 1999 Respondent discovered that the vehicles of Rivera, Shaffer, and Cinquina all displayed the same parking sticker. I credit Rodelli's testimony, and find, that the three employees were terminated for that reason and not because of activities on behalf of the Union.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has not violated the Act in the manner alleged in the complaint.

On the foregoing findings of fact, conclusions of law and upon the entire record, I issue the following recommended<sup>2</sup>

#### ORDER

The complaint is dismissed.

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<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.